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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/674,036 | 09/29/2003 | Jeff R. Justis | 4002-3415/PC977.00 | 2570 |
| 52196 | 7590 | 06/14/2007 | EXAMINER | |
| KRIEG DEVault LLP ONE INDIANA SQUARE, SUITE 2800 INDIANAPOLIS, IN 46204-2709 | | | WOODALL, NICHOLAS W | |
| | | ART UNIT | PAPER NUMBER | |
| | | 3733 | | |
| | | MAIL DATE | DELIVERY MODE | |
| | | 06/14/2007 | PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/674,036 | JUSTIS, JEFF R. |
| | Examiner | Art Unit |
| | Nicholas Woodall | 3733 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 March 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-16 and 46-74 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 46-57 is/are allowed.
- 6) Claim(s) 1-7,15,58,60-66, and 73 is/are rejected.
- 7) Claim(s) 8-14,16,59,67-72 and 74 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03/16/2007 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/16/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on 03/16/2007.

Drawings

2. The drawings were received on 03/16/2007. These drawings are acceptable.

Allowable Subject Matter

3. The indicated allowability of claims 7 and 15 is withdrawn in view of the newly discovered reference(s) to Aferzon. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

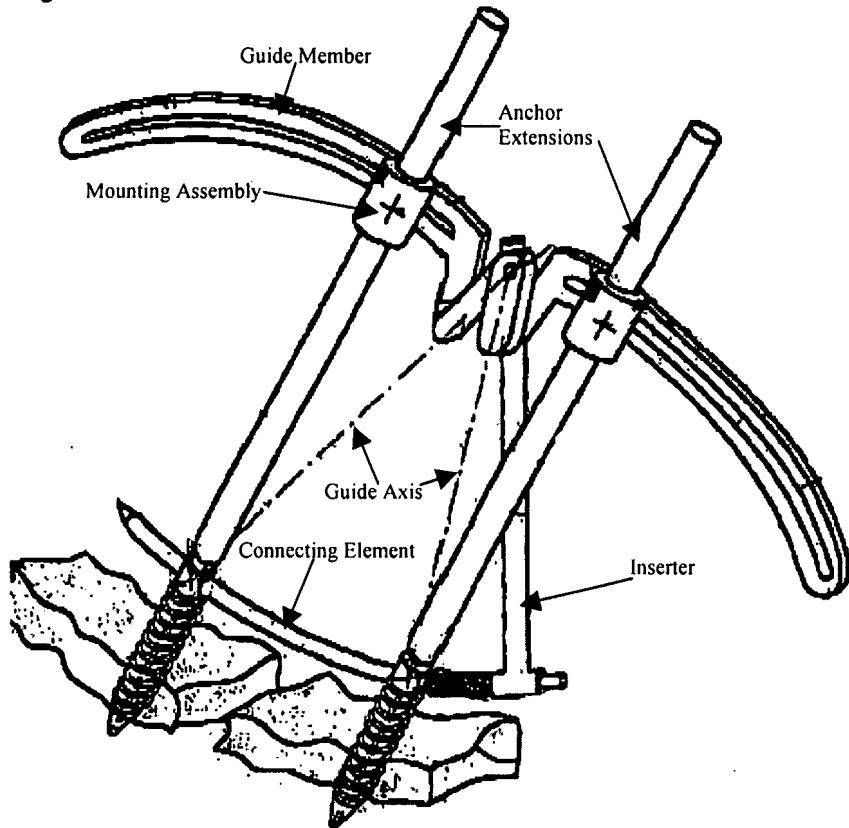
5. Claims 1-7, 15, 58, 60-66, and 73 are rejected under 35 U.S.C. 102(e) as being anticipated by Aferzon (U.S. Publication 2005/0234449).

Regarding claims 1, 58, and 65, Aferzon discloses a device comprising a pair of anchor extensions capable of engaging an animal subject and a guide instrument capable of being mounted to the proximal ends of the anchor extensions (see Figure 1 below). The anchor extensions include a proximal end and a distal end wherein the distal ends are capable of forming an alignment axis therebetween when engaged to

the animal subject. The guide instrument includes a guide member capable of defining a guide axis that intersects the alignment axis. The guide member is capable of being rotated about the proximal ends of the anchor extensions while mounted to the anchor extensions. Regarding claims 2 and 60, Aferzon discloses a device further comprising an inserter, wherein the inserter includes a proximal portion capable of being pivotally mounted adjacent the proximal ends of the anchor extensions and a distal portion extending transversely to the proximal portion capable of being moveable about the proximal ends of the pair of anchor extensions by pivoting the proximal portion relative thereto. Regarding claims 3 and 61, Aferzon discloses a device further comprising a connecting element capable of being releasably engaged to the distal portion of the inserter and capable of being positioned along the alignment axis with the inserter. Regarding claims 4 and 62, Aferzon discloses a device wherein the connecting element is a rod. Regarding claims 5 and 63, Aferzon discloses a device further comprising a pair of anchors including a distal portion capable of engaging a bony segment of an animal subject and a proximal receiver portion defining a passageway capable of being aligned along the alignment axis. The anchor extensions are capable of being mounted with the receiver portions of the anchors. Regarding claims 6 and 64, Aferzon discloses a device wherein the anchors are multi-axial screws. Regarding claims 7, 58, and 66, Aferzon discloses a device wherein the guide instrument includes a mounting assembly capable of being coupled with a guide member. The mounting assembly is capable of being mounted to the anchor extension. Regarding claims 15, 58, and 73, Aferzon

discloses a device wherein the mounting assembly is capable of being positioned about the proximal ends of the anchor extensions and also capable of being clamped thereto.

Figure 1



Allowable Subject Matter

6. Claims 46-57 are allowed.
7. Claims 8-14, 16, 59, 67-72, and 74 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments with respect to claims 1-16 and 46-74 have been considered but are moot in view of the new ground(s) of rejection. The examiner has

withdrawn previously indicated allowability of claims 7 and 15 and presented new grounds of rejection as discussed above necessitated by the amendment received on 03/16/2007, since the amendment changed the scope of independent claim 1 and therefore changing the scope of all dependent claims and necessitated the new grounds of rejection this office action is **FINAL**.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.
10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWW

EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER